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+ **W.P.No. 12888 of 2007**

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. . P e t

V s .

$ 1. The Joint Collector, Krishna District at Machilipatnam,

2. **The Revenue Divisional Officer, Vijayawada, Krishna District.**
3. **The Mandal Revenue Officer, Penuganchiprolu, Krishna District.**

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R e s p o n d e n t s

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? C A S E S R E F E R R E D : -

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 12888 of 207

DATED: 23 -10-2007

Between:-

Gundra Prakasam.

..Petitioner

And

The Joint Collector, Krishna District at Machilipatnam and two others.

..Respondents

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 12888 of 2007

O R D E R

Heard Sri Nageswar Rao Palle, learned counsel representing the petitioner and the learned Assistant Government Pleader for Civil Supplies.

2. The writ petition is filed for a Writ of Mandamus declaring the impugned order dated 21-05-2007 vide Rc. No. B1/S.R.A/7/2007 of the 1st respondent dismissing the appeal filed by the petitioner, as illegal, arbitrary, improper and consequently set aside the proceedings of the 2nd respondent dated 05-10-2007 vide Rc. No. A7/402/2007 and to pass such other appropriate orders.

3. The relevant portion of the impugned order reads as hereunder.

> "I have gone through case record and divisional record. It is observed that the appellant failed to get his F.P. shop authorization renewed beyond 31.3.1996. It is the primary responsibility of the appellant to renew his F.P. shop authorization after the date fo expiry. But, he failed to do so. As per clause 5 (iii) of the A.P. State P.D.S (Control) Order, 2001, "The authorization may be renewed if the application for

renewal is received within one month after the expiry of the period of its validity subject to payment of free prescribed therefore. However, if an application for renewal of authorization is not made within one month, after the expiry of its validity, the authorization shall cease to be valid and the entire security deposit made under sub-clause (2) of Clause (3) shall be forfeited". Hence, he has clearly violated the condition of the control order and ceased to be a dealer from 31-03-1996. he has not even intimated the matter to the appointing authority, causing sever inconvenience to the administration and poor card holders. S He admitted that he could not file D.D, in time due to his daughter's ill-health. However, no evidence is produced in proof of filing an application before the Revenue Divisional Officer, Vijayawada for permission or to the show cause notice issued by the Sub-Collector, Vijayawada.

As per Clause 3(3) of the Annexure of A.P. State P.D.S. (Control) Order, 2001 "every authorized F.P. shop intending to stop the business of supplying scheduled commodities shall give 30 days previous notice to the appointing authority to enable him to make alternative arrangements for supplying scheduled commodities to suppy card holders allotted to the shop". The appellant failed to do so. In the absence of any valid reasons the seven years of absence of the appellant cannot be justified and hence the appeal is devoid of any merit and there is no valid reason to interfere with the orders of the Revenue Divisional Officer, Vijayawada and the appeal is liable for dismissal.

In the circumstances of the case, the appeal petition filed by Sri G. Prakasam, s/o Jogaiah, Mutchintala village of Penguanchiprolu Mandal is accordingly dismissed. No costs.

An appeal against this orders, lies to the District Collector, Krishna within 30 days from the date of receipt of this order."

4. Sri Nageswara Rao Palle, learned counsel representing the writ-petitioner, had taken this Court through the contents of the affidavit filed in support of the writ petition and also had pointed out to certain of the orders made in the prior proceedings. Learned counsel would submit that in the light of the prior orders, the present impugned

order cannot be sustained.

5. On the contrary, the learned Assistant Government Pleader for Civil Supplies had pointed out to the relevant portions of the counter-affidavit and would maintain that in the light of the facts and circumstances, despite prior orders made, no relief can be granted, even otherwise the petitioner had not invoked the alternative remedy, in any view of the matter, the writ petition is liable to be dismissed.

6. The petitioner had stated that he was appointed as Fair Price Shop dealer of Muchinatala village, Penganchiprolu Mandal, Krishna District on 05-07-1979 by proceedings Rc. No. B7/244/1979 of the Joint Collector, Krishna District on permanent basis and thereafter he had been distributing the commodities to the card holders without committing any irregularities and his authorization was renewed from time to time.

7. It is further stated by the petitioner that while the matters stood thus, his eldest daughter suffered serious illness in the month of June, 1997 which was diagnosed as brain fever due to which he was constrained to apply for leave before the 2nd respondent on 30-06-1997 for the purpose of treatment of his daughter at Vijayawada and as the illness of his daughter was not cured he submitted an application for extension of leave for six months from July 1998 onwards. It is further stated that while that being so, the 1st respondent had issued a show cause notice on 24-09-1998 bearing Rc. No. A7/155/1998, basing on a report submitted by the 2nd respondent stating that he

failed to lift the commodities from July 1997 and accordingly he submitted his detailed explanation to the said show cause notice contending that he was a fair price shop dealer for the last 19 years and had not faced any remarks and that on account of his eldest daughter's illness only sought for leave to attend the treatment of his daughter's illness at Vijayawada and requested to restore his dealership.

8. It is also averred that his authorization was neither suspended nor cancelled but the monthly allotments were stopped and despite submitting number of petitions to the 2nd respondent, no action was taken as such he filed a petition through his counsel on 2-4-2004 on the 2nd respondent and in spite of the same, the 2nd respondent had not passed any orders on his petition and that he filed an appeal before the 1st respondent i.e. Joint Collector, Krishna and the Joint Collector requested the 2nd respondent to offer his remarks and to send the concerned records for disposal of the appeal vide proceedings dated 12-07-2004 bearing Rc. No.B1/SRA.11/2004.

9. It is further averred that while so in the month of September, 2004, the 2nd respondent had issued a notification for filling up of the fair price shop of Munchintala village and immediately he filed a petition on 28-09-2004 bringing the fact of pendency of appeal filed by him before the Joint Collector and thereafter he filed W.P. No. 27954 of 2005 for not disposing of the appeal filed by him even after a lapse of

more than one and half year and this Court after careful consideration of the facts and circumstances and the material available on record was pleased to allow the writ petition by directing him “to immediately file an application for renewal of his fair price shop dealership and on such application being filed, the respondent authorities shall consider the same and allot monthly stocks to the petitioner as per law” vide order dated 26.6.2006, that thereafter he filed a petition before the 2nd respondent on 14-08-2006 duly enclosing the copy of the order passed in W.P. No. 27954/2006 dated 26.6.2006 along with requisite trade deposit of Rs. 200/- and Rs. 500/- by way of challan towards renewal of authorization and Rs. 100/- towards the renewal of kerosene oil licence, that in spite of his repeated visits, the 2nd respondent herein did not consider his application for renewal of F.P. shop authorization and as such he filed C.C. NO.1023 of 2006 seeking punishment of respondents and the 2nd respondent in order to avoid the contempt proceedings passed the impugned proceedings dated 5-10-2006 rejecting his application for renewal of his Fair Price shop authorization and allotment of essential commodities. It is further averred that the impugned proceedings dated 5-10-2006 is illegal, improper and without any application of mind and that the impugned proceedings was not served on him, but the said copy was obtained by him through his counsel as the respondents have filed the said proceedings in the Contempt Case, basing on which the contempt case was closed.

10. It is further averred that the petitioner belongs to Scheduled Caste and rendered his services as a Fair Price Shop dealer for the last 19 years continuously without any adverse remarks and except the said shop he do not have any other source of income and the above lapse was done but for the severe illness of his daughter.

11. It is further averred that having been aggrieved by the proceedings dated 5-10-2006 he filed an appeal along with the stay petition before the 1st respondent on 28-11-2006 seeking to set aside the impugned proceedings Rc. No. A7/402/2004 dated 05-10-2006 and the 1st respondent, for the reasons best known to him, kept the said appeal pending without passing any orders and as such he filed W.P. No. 3654 of 2007 before this Court seeking a direction to the 1st respondent to dispose of the appeal filed by him as expeditiously as possible and the same was disposed on 26-02-2007. It is further averred that the 1st respondent only to show that he had complied with the orders of this Court in W.P. No. 3654/2007 dated 26-02-2007 passed the impugned order 21-05-2007 vide Rc. No. B1/SRA/7/2007 dismissing his appeal and that the 1st respondent had not conducted any enquiry or perused the documents filed by him in support of his case. In such circumstances, the petitioner approached this Court by filing the present writ petition.

12. In the counter-affidavit filed by respondents 1 to 3, it is stated that the dealer had not submitted leave application as alleged to

the Sub-Collector, Vijayawada, who is the appointing authority and under Clause 3(3) of the Annexure of A.P. State Public Distribution System Control Order, 2001, every authorized fair price shop dealer intending to stop the business of supplying commodities shall give thirty days previous notice to the appointing authority, but the dealer has abruptly left the village and cause lot of inconvenience to the cardholders and the administration.

13. Further, it is stated that the petitioner abruptly stopped distribution of essential commodities from the month of July, 1997 and further the fair price shop authorization was only valid upto 31-03-1996 and the dealer had failed to renew his authorization as per Clause 5(iii) of the said Order, 2001 and hence the authorization of the petitioner has ceased and he is no more a fair price shop dealer and that the Joint Collector, Krishna had passed final orders on the appeal filed by the petitioner through order No. B1/SRA/11/2004 dated 17-03-2006 rejecting the plea of allotment of essential commodities to the petitioner only after considering the material on record.

14. It is further stated that the petitioner had submitted a representation for allotment of essential commodities after gap of six years and the said representation was forwarded to the Mandal Revenue Officer, Penuganchiprolu for enquiry and the Mandal Revenue Officer, Penganchiprolu had informed that the petitioner is not residing in Penuganchiprolu, but residing at Machilipatnam and doing cable connection business and authorization was not renewed

and hence the request of the petitioner for allotment of essential commodities was not considered. In the meantime the petitioner approached this Court and this Court in W.P. No.27954 of 2005 dated 26.6.2006 had passed order directing the petitioner to file an application for renewal of his fair price shop dealership and on such application being filed, the respondent authorities shall consider the same and allot monthly stocks to the petitioner as per law and accordingly the petitioner submitted a representation on 14-08-2006 for renewal of his authorization and it was rejected and orders were communicated through this office proceedings in Rc. No. A7/402/2004, dated 05-10-2006 and since the petitioner was not available in the village, these orders were affixed on the main door of the petitioner's house in the presence of the sarpanch and other mediators of the village and that the contempt case No.1023 of 2006 filed by the petitioner was closed by this Court on 31-10-2006.

15. It is further stated that the contention of the petitioner that he had submitted leave application and it was accepted is not correct. It is further stated that the petitioner had not submitted any such leave application and also not produced evidence about acceptance of leave and since the petitioner had failed to submit application for renewal of fair price shop authorization within the stipulated time, as per Clause 5(iii) of the A.P. State P.D.S.C Order,2001, the fair price shop authorization ceased to be valid and there is no necessity further more either to suspend or cancel authorization.

16. It is further stated that the petitioner filed an appeal before the Joint Collector, Krishna against the orders of the Revenue Divisional Officer, Vijayawada in Rc. A7/402/2004 dated 05-10-2004 and the Joint Collector, Krishna, after conducting thorough enquiry and in obedience of the orders of this Court in W.P.No.3654 of 2007 had passed final orders through proceedings in Rc.B1/SRA/7/2007 dated 21.05.2007 dismissing the appeal.

17. It is further stated that the petitioner ought to have filed a revision petition before the Collector, Krishna within 30 days from the date of receipt of the order as indicated in Joint Collector's Order No. B1/SRA/7/2007 dated 21.5.2007 and the petitioner without exhausting the channel has approached this Court and that the request of the petitioner for allotment of essential commodities cannot be considered now as the authorization of the petitioner ceased to be valid in the year 1996 itself and hence this petition is liable to be dismissed.

18. Clause 5 of the A.P. State Public Distribution System Control Order, 2001 deals with the issue of authorization to fair price shops and establishment. Clause 5 (5) (iii) specifies that the authorization may be renewed if the application for renewal is received within one month after the expiry of the period of its validity subject to payment of fee prescribed therefor. However, if an application for renewal of authorization is not made within one month, after the expiry of its validity, the authorization shall cease to be valid and the entire security deposit made under sub-clause (2) of clause (3) shall be

forfeited.

19. In the light of the aforesaid provision, certain submissions were made by the learned Assistant Government Pleader for Civil Supplies to the effect that no specific separate order in this regard need be passed and hence the petitioner cannot take any shelter raising such a ground.

20. In the light of the facts and circumstances, taking into consideration the stand taken by the petitioner and also the respondents in the counter affidavit, this Court is thoroughly satisfied that the petitioner is not entitled to any of the reliefs as prayed for, especially, in the light of the specific provision referred to supra. Accordingly, the writ petition is devoid of merit and the same shall stand dismissed. No costs.

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P.S. NARAYANA,

Dated: 23 -10-2007
Vp
L.R. copy to be marked.